

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7626

Application of New Cingular Wireless PCS, LLC,)
d/b/a AT&T Mobility ("AT&T"), for authority,)
pursuant to 30 V.S.A. § 248a, for a Certificate of)
Public Good to upgrade wireless communications)
facilities on and at existing communications towers)
and non-tower structures in Arlington, Jericho,)
Killington, Ludlow, Montpelier, New Haven and)
South Burlington, as part of its Universal Mobile)
Telecommunications Service upgrade)

Order entered: 7/8/2010

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves the petition filed on May 21, 2010, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Order implementing standards and procedures under this section ("Procedures Order"),¹ and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of communications facilities located in the Towns of Arlington, Jericho, Killington, Ludlow, Montpelier, New Haven and South Burlington, Vermont (the "Project"), as part of Petitioner's Universal Mobile Telecommunications Service upgrade.

II. BACKGROUND

This case involves a petition and prefiled testimony filed by the Petitioner on May 21, 2010, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a, authorizing the construction of the Project.

1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*; Order issued August 14, 2009.

No comments or requests for hearing regarding the Project have been filed with the Board.²

The Board has determined that the petition and prefiled testimony have effectively addressed the issues raised with respect to the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The Project is part of AT&T's Universal Mobile Telecommunications Service ("UMTS") upgrade that involves the installation and modification of wireless telecommunications services in Vermont. The ultimate objective of the project is to upgrade AT&T's Vermont network to provide 3G wireless technologies for simultaneous circuit-switched voice and packet-switched data communications. Joint Panel pf. at 3-5, 13.

2. The Project facilities are proposed to be located at the following sites: (1) Arlington, Site No. VT6524, 1698 Tory Lane, Arlington, Vermont, Tax Map/Parcel ID No. 4-1-14; (2) Jericho, Site No. VT6516, 23 Browns Trace Road, Jericho, Vermont, Tax Map/Parcel ID No. BT023; (3) Killington, Site No. VT6485, 78 Weathervane Drive, Killington, Vermont, Tax Map/Parcel ID No. 22-79; (4) Ludlow, Site No. VT6414, 8 Gill Terrace, Ludlow, Vermont, Tax Map/Parcel ID No. 230221; (5) Montpelier, Site No. VT6506, Hill Street, Montpelier, Vermont, Tax Map/Parcel ID No. 74-104; (6) New Haven, Site No. VT6513, 749 North Street, New Haven, Vermont, Tax Map/Parcel ID No. 5-181; and (7) South Burlington, Site No. VT6452, 1270 Shelburne Road, South Burlington, Vermont, Tax Map/Parcel ID No. 1540-01270. Joint Panel pf. at 3-4.

3. The Arlington, Jericho and Montpelier sites will place the new facilities on existing telecommunications towers. The South Burlington, Killington and Ludlow sites involve placement of the new facilities on the rooftops of existing buildings, and the New Haven site

2. The Petitioner submitted, as exhibits, recommendation forms and/or letters that it received from the towns where the Project components are proposed to be located. Both the Select Board and Zoning Administrator for the Town of Killington recommended that the Project be approved subject to the condition that the Petitioner obtain any necessary zoning permits from the town. This issue will be addressed later in this Order.

utilizes an existing silo to support the new facilities. None of these structures are owned by AT&T. The Project also involves the modification or addition of antenna-operating equipment in the existing communications sheds located at each of the sites. Joint Panel pf. at 4, 5-10.

4. With the exception of the Ludlow site, each of the Project facilities will involve the replacement of either three or four existing panel antennas with six new panel antennas. The Ludlow site involves the replacement of three whip antennas with three panel antennas. At the South Burlington site, the new antennas will be housed in two 30"-high cylindrical antenna canisters containing three panel antennas each. Joint Panel pf. at 5-10.

5. With the exception of the Killington site, which involves a minor increase in height, the proposed Project will not increase the height of any of the existing structures. The Project will not increase the width of any of the existing structures by more than twenty feet, and will involve only temporary earth disturbance associated with Project installation at the existing sites. Joint Panel pf. at 4, 5-10.

6. At the Killington site, similar to the existing antennas, the new antennas will be housed in a "stealth" cupola atop the Northstar Hotel building. The sole purpose of the stealth cupola is to conceal the antennas from view and blend the facilities into the existing architecture of the hotel. The centerline of the new antennas will be 1' 9" higher than the existing antennas. To accommodate the higher antenna placement, a taller stealth cupola will be installed, extending a total of approximately seven feet above the rooftop. Joint Panel pf. at 6-7, 30-31; exh. Applicant JP-6, Tab 1.

7. Petitioner's antennas currently installed at the Arlington site are subject to a zoning permit that required them to be painted to match the color of the existing building and other antennas as closely as possible. AT&T has committed to paint the new antennas to conform to the zoning permit. Joint Panel pf. at 32.

8. The existing structures are capable of accommodating the new facilities provided the recommendations specified in structural reports developed for each site are followed. Joint Panel pf. at 14-15.

9. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 10 and 11, below.

10. The proposed co-location of facilities will not have an undue adverse effect on aesthetics when viewed in the overall context of the existing telecommunications towers and/or equipment located at each site. Joint Panel pf. at 16-17; exhs. Applicant JP-4 through Applicant JP-10.

11. There are no rare or irreplaceable natural areas or historic sites within the vicinity of the existing sites where the Project will be located. Joint Panel pf. at 17-19.

IV. DISCUSSION & CONCLUSION

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

Pursuant to § 248a(j)(1), the Procedures Order defines a project of "limited size and scope" as a facility that:

(a) consists of an attachment to an existing structure that does not increase the height or width of the existing structure by more than twenty feet; or (b) does not exceed 135 feet in height and does not include road building or other earth disturbance exceeding 100 square feet, other than a temporary road or earth disturbance associated with construction or installation activities.

Further, pursuant to Section (L) of the Procedures Order, regarding projects of "limited size and scope:"

Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing

Each of the communications facilities included as part of the proposed Project will consist of an attachment to an existing structure that does not increase the height or width of that structure by more than twenty feet and will involve only temporary earth disturbance associated with Project installation at the existing sites.³ Therefore, all of the facilities qualify as facilities of "limited size and scope" as defined in the Board's Procedures Order governing the installation of wireless telecommunications facilities. The Procedures Order provides that the Board, in its review of facilities of "limited size and scope," conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas).

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.⁴

As a final matter, we note that the Town of Killington Select Board and Zoning Administrator have both recommended that Board approval of the Project be conditioned upon AT&T applying for and receiving any necessary zoning permits for the new cupola atop the hotel in Killington, which is being installed solely to screen the antennas from view.⁵ AT&T has asked the Board to "provide clarity on this issue," apparently asking us to rule on whether or not a zoning permit from the Town of Killington is required for the cupola improvements at that site.⁶ We decline to issue the requested ruling because there is no evidence that the town has actually attempted to require AT&T to apply for and obtain a zoning permit for the stealth cupola, nor has the town intervened in this proceeding to assert a claim that such a permit is

3. Joint Panel pf. at 11.

4. We have specifically rejected a proposed finding submitted by AT&T related to the general good that relied on the testimony of AT&T witness Robert Donovan previously submitted in a different Docket, because the Board's findings must be based on the evidence in the current proceeding. 3 V.S.A. § 809(g). In any future filings related to the UMTS upgrade, AT&T should include all testimony upon which it relies, rather than referring to testimony provided in an earlier proceeding.

5. See Joint Panel pf. at 30-31; exh. Applicant JP-6, Tab 7.C.8.

6. See Joint Panel pf. at 30-31.

required. Therefore, we conclude that no controversy has been submitted to us for determination⁷. If, however, the town subsequently attempts to require a zoning permit for the new cupola, and AT&T believes the structure qualifies for the exemption from zoning provided by 30 V.S.A. § 248a(h), then AT&T or the town may petition the Board at that time for resolution of the dispute pursuant to that statutory section.⁸

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of communications facilities at the locations specified in the above findings, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

7. *Bischoff v Bletz*, 2008 VT 16, ¶ 15, 183 Vt. 235. ("Vermont courts have 'subject matter jurisdiction only over actual cases or controversies involving litigants with adverse interests.'") (citing, *Brod v. Agency of Natural Res.*, 2007 VT 87, ¶¶ 8, 182 Vt. 234).

8. Section 248a(h) of Title 30 gives the Board the authority to hear and determine jurisdictional disputes related to the exemption of telecommunications facilities, as that phrase is defined in 30 V.S.A. § 248a(b)(1), from municipal zoning requirements.

Dated at Montpelier, Vermont, this 8th day July, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 8, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.